

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing (day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference see form PCT/ISA/220	FOR FURTHER ACTION See paragraph 2 below
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International application No. PCT/EP2004/002829	International filing date (day/month/year) 17.03.2004	Priority date (day/month/year) 18.03.2003
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International Patent Classification (IPC) or both national classification and IPC A61B17/00
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Applicant GASCHE, Anke

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Hamann, J Telephone No. +49 89 2399-7046
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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/002829

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material:
 in written format
 in computer readable form
 - c. time of filing/furnishing:
 contained in the international application as filed.
 filed together with the international application in computer readable form.
 furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/002829

Box No. II Priority

1. The following document has not been furnished:

- copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
- translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/002829

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- the entire international application,
 claims Nos. 41-61

because:

- the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
 the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
 the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
 no international search report has been established for the whole application or for said claims Nos. 41-61
 the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form has not been furnished

does not comply with the standard

the computer readable form has not been furnished

does not comply with the standard

the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/EP2004/002829

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes:	Claims	1-40
	No:	Claims	
Inventive step (IS)	Yes:	Claims	1-40
	No:	Claims	
Industrial applicability (IA)	Yes:	Claims	1-40
	No:	Claims	

2. Citations and explanations

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)****PCT/EP04/02829****10/549599****Re Item V****Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Reference is made to the following documents:
D1: US-A-5,868,760 (MCGUCKIN JR JAMES F) 9 February 1999 (1999-02-09)
D2: US-A-5,433,708 (BEHL ROBERT S ET AL) 18 July 1995 (1995-07-18)
D3: WO 00/59380 A (COALESCENT SURGICAL INC) 12 October 2000
(2000-10-12)

- 2.1 The document D1 is regarded as being the closest prior art to the subject-matter of **claim 1**, and discloses (see column 9, lines 27-40):
A kit for performing an inversion of a veriform appendix of a patient, comprising a balloon, a conventional endoscope, and a longitudinally elongated operating capsule, for drawing the appendix into the bowel interior and into the operating capsule.
Since a balloon is normally mounted on a catheter, D1 thereby discloses an elongated flexible element, and means for anchoring the distal end of said elongated flexible element to interior walls of the appendix according to claim 1.

The subject-matter of claim 1 differs from this known kit in that it further comprises means for providing counterforce against the appendix base, wherein said means for providing counterforce against said appendix base is adapted for being advanced over said elongated flexible element toward said appendix base and engaging with said appendix base.

The means for providing counterforce against the appendix base facilitate the inversion of the appendix. Therefore, the subject-matter of claim 1 is considered as **involving an inventive step** (Article 33(3) PCT).

Even though D2 (see Figs. 7-9; column 3, line 17; column 4, line 62) and D3 (see e.g. Figs. 17A-17C and 18A-18E) further disclose means (outer sheath member 52 in D2; punch 704 in D3) adapted for being advanced over the elongated

flexible element toward the appendix base and engaging with said appendix base, these means are not suitable for providing counterforce against the appendix base for performing an inversion of a veriform appendix: In D2 the inner diameter of the outer sheath member 52 is too small to be advanced over the expanded cage 56 around which further the appendix would have to be placed, and in D3 part 704 is a punch and would possibly cut the appendix base.

Since the devices of D2 and D3 are not disclosed for performing an inversion of a veriform appendix, they are no appropriate starting points for considering inventive step of claim 1.

- 2.2 **Claims 2-25** are dependent on claim 1 and as such also meet the requirements of the PCT with respect to novelty and inventive step.
- 2.3 In the light of the description it appears that the tubular element in **claim 26** is also suitable for providing counterforce against the appendix base. Taking for granted that this feature - which as per the wording of the claim does not clearly form part of its subject-matter, but is in fact essential for the technical effect of the invention (see 2.1 above; Guidelines C-III, 4.4) - has already been added to claim 26, the subject-matter of the remaining apparatus **claims 26-40** also meets the requirements of the PCT with respect to novelty and inventive step.